


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
JUN 27 2007

CLERK

JAMES I. DALE,

Plaintiff,

vs.

DARYL SLYKHUIS, Interim Warden, in his
individual and official capacities;
KELLY DAUGHTERS, Counselor, in his
individual capacity; and MARK LEONARD,
in his individual capacity,
Defendants.

CIV. 04-4153

ORDER

Plaintiff brings this prisoner civil rights action pursuant to 42 U.S.C. § 1983. The Magistrate Judge issued a Report and Recommendation recommending that Defendants' Motion for Summary Judgment be granted. The Court has reviewed the Report and Recommendation of Judge Simko and the Objection of James Dale together with the medical records attached to Mr. Dale's Objection. The medical history of Mr. Dale's foot injury is well documented in the medical records attached to the Objection of Mr. Dale. Mr. Dale points out at page 5 of his Objection that he cannot get an appointment for a medical expert to give an opinion as to whether or not he suffered any injury by being precluded for a time from wearing the orthotic without the removal of the insoles of the prescribed New Balance shoes. The x-ray report of Barry S. Monfore, M.D., Radiologist, dated 5/11/06 and marked as Ex. 203 states: "EXAMINATION PERFORMED: RIGHT CALCANEUS. FINDINGS: The patient has a history of old calcaneal fracture. Bones appear to be demineralized. Examination is negative for acute fracture or dislocation." This examination does not indicate any

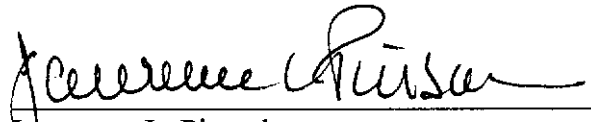
aggravation of the medical condition that pre-existed the refusal to allow the withdrawal of the insoles for insertion of the orthotics. The x-ray report tends to show that there was no objective change to Mr. Dale's pre-existing condition. There is no other evidence in the record concerning any possible aggravation of Mr. Dale's pre-existing injury.

Accordingly, IT IS ORDERED:


1. Plaintiff's Objection (Doc. 67) is OVERRULED.
2. The Report and Recommendation (Doc. 65) is ADOPTED in its entirety with the additional comments above.
3. Defendants' Motion for Summary Judgment (Doc. 50) is GRANTED and judgment shall be entered in favor of the defendants and against the plaintiff on all of plaintiff's claims for relief.
4. Plaintiff's other pending motions (Docs. 30, 41 and 63) are DENIED AS MOOT.

Dated this 27th day of June, 2007.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

By: , Deputy
(SEAL)